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VIA ELECTRONIC CASE FILING
Hon. Denise L. Cote, U.S.D.J.
United States District Court
Southern District of New York
500 Pearl Street, Room 1610
New York, NY 10007

Re: United States v. Thiam, Docket No. 17-CR-47 (DLC)

Your Honor:

As co-counsel for defendant Thiam, I respectfully submit this supplemental sentencing memorandum to address significant, extraordinary, and inaccurate claims made by the Probation Department and the Government regarding the effect of the offense on the nation and people of Guinea.

As the Court is aware, the Probation Department has recommended an aggregate sentence of 121 months, and this recommendation is based in part on its belief that "[Mr. Thiam's good works] were all undone by his treachery and greed… [and that] the 12.4 million citizens of Guinea, one of the poorest countries in the world, are worse off today because of Thiam." The Government's sentencing memorandum (Doc. 131) likewise repeatedly accuses Mr. Thiam of "contribut[ing] to dire poverty in Guinea" and conspiring to give away the country's economy for a fee. Indeed, the Government claims that Mr. Thiam took actions "that would have deprived the Guinean population of literally billions of dollars in mineral wealth" and repeatedly cites the impoverished condition of Guinea as an aggravating factor. These arguments require an answer.

During trial, as this Court will recall, the Court instructed the jury that the Government was not required to prove whether the China International Fund deal was good or bad for Guinea and that this was not a matter for the jury to decide. The Probation Department and the Government, however, have evidently decided that the verdict in this case constitutes a determination that the Republic of Guinea and its citizens in fact suffered material harm. This is, quite simply, untrue.

First, the deal resulted in the CIF investing between $250 million and $400 million in Guinea. The CIF built a power station and water treatment plant in the capital, Conakry, which provided, and continue to provide, electricity and a clean water supply to residents of poor neighborhoods who did not previously have those amenities. The CIF also financed the construction and operation of a commuter railroad. The railroad continued in operation until last year and the power station and water treatment plant continue to function today.

Second, the CIF deal was not a giveaway of the entire Guinean economy or mining sector. The exclusivity in the agreement was limited by the Guinean mining code both according to the letter of the contract and in practice. During the period the agreement was in force, approximately 650 mining licenses were issued by the Guinean government, and only 21 of those went to CIF. The remainder were issued to other companies and to private citizens of Guinea. As such, Guineans and other prospective investors were not excluded from exploiting the country's resources.

Third, there were no better deals on the table; in fact, there were no other deals on the table at all. At the time the CIF approached the Guinean government, the Republic of Guinea was under sanctions from the European Union, the African Union, ECOWAS, and other international groups due to the 2008 military takeover, and both public and private sources of investment had dried up. The CIF was the only source willing to make a major investment in Guinea at the time, and the agreement provided an infusion of cash to the country at a time when such was badly needed.

Fourth, the CIF agreement was not disadvantageous as compared to similar agreements that had been made in the past and that were made subsequently. A free 15 percent royalty was standard for mining development contracts in this region (with the exception of gold, where the standard royalty was 7.5 percent). Indeed, the government that took power after the 2010 election, which came to power on a promise to reform the Guinean mining code, announced that its minimum standard for future deals was a free stake of 15 percent plus an option to buy up to an additional 20 percent, meaning that it also considered a 15 percent free royalty to be reasonable. Indeed, no subsequent government of Guinea to date has obtained a mining development deal that was more advantageous than the CIF agreement.

It should also be noted that Mr. Thiam negotiated both a 15 percent stake in the local development company *and* a 15 percent stake in the parent company. Given that the parent company owned 85 percent of the local GDC, this stake in the parent company rendered the republic's share equivalent to a total of 27.75 percent.

Fifth, Mr. Thiam wasn't the only person who regarded the CIF deal as good for Guinea. By the time the CIF proposal even reached his department, it had already been the subject of discussion and approval by the president's office. Moreover, the objections raised by witness Camara were taken up by the presidency and the prime minister's office, and a legal determination was made that the incorporation of the Guinean mining code would prevent the agreement from conferring a blanket exclusivity upon CIF. Ultimately, the agreement was approved by the entire cabinet.

In sum, Mr. Thiam genuinely believed that the CIF agreement was good for the Republic of Guinea, and that belief was borne out by the way the agreement was implemented and the considerable infrastructure investment that was realized. The jury has convicted Mr. Thiam of accepting a bribe in exchange for his role in negotiating the agreement – none of which came from the Guinean treasury – and while Mr. Thiam intends to appeal, the verdict must be taken as final for sentencing purposes and an appropriate punishment must be assessed. However, contrary to the Probation Department's recommendation, the appropriate punishment *should not* be enhanced on the basis that the citizens of Guinea were made materially worse off. In fact, although the jury verdict indicates that Republic of Guinea was harmed by being deprived of Mr. Thiam's honest services, it was not *materially* harmed and in fact realized considerable material benefit. This Court should hence impose the sentence previously requested by Mr. Thiam rather than the higher amount sought by the Probation Department.

The Court's consideration in this matter is appreciated.

Respectfully submitted,

/s/ Jonathan I. Edelstein

Jonathan I. Edelstein

cc: All Counsel (Via ECF)